IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 145 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIDDIK HAJI ISMAIL KATARIYA

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 145 of 2005

Mr.M.M.Tirmizi for MS SN QURESHI for Petitioner No. 1

Mr.K.P.Raval, A.P.P. for Respondent No. 1

MR CL SONI for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 28/04/2005

ORAL JUDGEMENT

1. Heard Mr. M.M.Tirmizi for Ms. S.N.Qureshi, learned Advocate for the applicant, Mr.K.P.Raval, learned A.P.P. for the respondent no.1-State and Mr. C.L.Soni, learned Advocate for the respondent no.2.

1.1 Rule. Learned A.P.P. Mr.K.P.Raval waives service on behalf of the respondent no.1-State while Mr. C.L.Soni waives service on behalf of the respondent no.2. With the consent of the learned Advocates for both the parties, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application is directed against the impugned judgment and order dated 23-2-2005 passed by the learned Judicial Magistrate, First Class, Dhoraji, in Criminal Misc. Application no.18/2005 whereby the learned Magistrate while rejecting the application made by the present applicant has directed the Muddamal goats and sheep to be handed over to the custody of the respondent no.2-the Manager, Dhoraji Pancharapole, District Rajkot, on the conditions stipulated in the order.

3. The applicant is a small businessman engaged in the purchase and sale of goats and sheep for earning his livelihood. It is the case of the applicant that applicant is the owner of the cattle transported by Abdul Kaderbhai Habibbhai Kalva Khatki in a truck bearing no.GJ IV 7214 which was intercepted by the concerned Police Officer and a criminal complaint bearing CR No.II 3010/2005 came to be filed on 9-2-2001 at Patan Vav Police Station for the offence punishable under Section 11(d) of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the "said Act"). The said truck was seized by the police officers with cattle, i.e. 130 goats and 50 sheeps as per the Magistrate's order as they were allegedly very closely tied to each other in a cruel manner with no facilities of fodder and water. Being aggrieved by the said order, the applicant being the owner, then, preferred the above numbered Criminal Revision Application no.18/2005 before the learned Judicial Magistrate, First Class, Dhoraji, and the learned Magistrate passed the impugned judgment and order dated 23-2-2005 as stated in paragraph 1 of the judgment which is the subject matter of challenge in the present Criminal Revision Application.

4. Learned Counsel Mr. M.M.Tirmizi for Ms. S.N.Qureshi for the applicant has submitted that merely because the cattle were tied very closely to each other and the truck was carrying more than the permitted number of cattle, it cannot be said that cruelty is committed so as to necessitate their seizure on the presumption that the cattle were meant to be slaughtered. The learned Counsel submitted that there was no allegation to the

effect that the cattle were meant to be slaughtered. The learned Counsel next submitted that even assuming that the offence of cruelty is committed this was the first offence. The learned Counsel also contended that some of the cattle have already died and that the authorities at Pancharapole is not maintaining the cattle properly. It is finally submitted that considering all these grounds, the applicant being the owner would be the best person to look after the cattle and as such the impugned judgment and order deserves to be quashed and set aside and the cattle be directed to be handed over to the applicant. In order to substantiate his say, the learned Counsel has placed reliance on the decision dated 30th October, 1985/1st November, 1985 rendered in Spl.Criminal Application no.804 of 1985 with Criminal Misc.Application no.1971 of 1985 (Coram: M.B.Shah,J. as His Lordship then was) wherein in an identical set of facts, the Court interfered with the order of the lower Court and directed the Investigating Officer to deliver possession of the alive animals to the petitioner forthwith and the learned Magistrate was also directed to see that the possession of animals was delivered to the petitioner immediately without fail on certain conditions. The learned Counsel has next placed reliance on the decision rendered in the case of Vadhwan Mahajan Panjarapole Vs. State of Gujarat & Anr., reported in 2001 (1) G.L.H. 662 as also the decision of the Hon'ble Apex Court in Manager, Pancharapole, Deodar & Anr. Vs.Chakaram Moraji Nat & Ors, reported in 1999 (1) G.L.R. 587 (S.C.) to contend that in a case where the offence has been committed for the first time, the custody of the Muddamal must be handed over to the petitioner if there was no material on record to show that the offence is being repeated. Furthermore, the learned Counsel has further drawn my attention to the decision in the case of MANAGER, PANJARAPOLE, DEODAR V. CHAKARAM MORAJI NAT. & ANR.reported in 1997(2)G.L.H.1321 wherein also it is observed that the interim custody of the seized animals must be handed over to the petitioner. I am fully convinced with the arguments canvassed by the learned Counsel for the petitioner.

5. On the other hand, learned Counsel Mr.C.L.Soni submitted that the respondent no.2-Dhoraji Pancharapole is very popular institution which has been awarded certificates and medals for outstanding performance and as such the Pancharapole is in a better position to take care of the cattle in question. According to him, the order passed by the learned Judicial Magistrate, First Class is quite just and proper which does not warrant interference by this Court. He, therefore, prayed that

the Criminal Revision Application be dismissed.

6. In view of what is discussed herein above, in light of the ratio laid down by the authorities cited above, the applicant being the owner of the cattle, has produced the necessary receipts regarding purchase of the cattle and the owner is facing the first prosecution, I am of the opinion that till the pending case in connection with CR No.II 3010/2005 is decided the custody of the Muddamal animals must be handed over to the applicant since he has a better claim for the custody of the animals during prosecution and the present application deserves to be allowed. Hence, the application is allowed. The impugned judgment and order dated 23-2-2005 passed by the learned Judicial Magistrate, First Class, in Criminal Misc.Application no.18/2005 is hereby quashed and set aside. The interim custody of the remaining live goats and sheep shall be handed over to the applicant upon his furnishing all the particulars regarding such goats and sheep and also furnishing personal bond inter alia stating therein that the said goats and sheep shall be produced before the learned Magistrate as and when required. The applicant will be at liberty to take appropriate legal remedy against the concerned responsible persons for the loss of goats and sheep at an appropriate point of time. The trial Court is directed to give priority to the pending case in connection with CR No.II 3010/2005 so as to conclude the proceedings as expeditiously as possible, preferably within a period of three months from today. The applicant is also directed to get the ears of the cattle punctured for the purpose of identification.

Rule is made absolute in the above terms.

(M.D.Shah,J.)

stanley-mds.